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Mission permanente du Portugal

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COMMISSION OF HUMAN RIGHTS

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Intervention of Mrs Marta Santos Pais
on behalf of the portuguese delegation

Geneva, 18th February 1991

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Mr. Chairman,

1. The Commission is called today to consider an important set of questions in the field of justice, where relevant steps are to be noticed, at the level of standard-setting and of reinforcement of existing mechanisms, intended to guarantee the practical implementation of the principles ~~previously~~ adopted.

In the diversity of issues at stake, a basic idea flows clearly, the deep relation between human rights and the administration of justice.

In fact, apart from recognizing that human rights are inherent to the human dignity, or declaring that they should be respected, protected and promoted, history has shown the need for establishing institutions to secure these aims, to ensure effective safeguards, to give them a real meaning in the common everyday life.

Institutions which are linked in the cycle of establishing the law, protecting the rights, complaining about violations, ensuring redress or simply promoting the dissemination of information on fundamental rights and freedoms. A cycle that is not necessarily clear for everyone, but which should work in a transparent way, reinsuring and being understood by all.

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2. In the light of this considerations, the Ministry of Justice of Portugal has launched an important campaign called "Citizen and Justice" intended to

- bring transparency into the administration of justice;

- facilitate the access to justice, by establishing specific bodies intended to welcome and provide legal assistance and counselling, and

- reinforce the confidence in the system of justice.

3. Recognizing the importance of this cycle, two international meetings will take place this year in Portugal, foccussing on the question of "legal protection of human rights".

Mr. Chairman,

4. Two drafts of new instruments are before the Commission, reflecting a growing concern before persistent situations of violations of human rights, aiming at the reinforcement of the international system of protection of human rights.

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4.1. The first one constitutes an important step towards the study of an additional protocol to the Convention against Torture.

Following a recommendation of the Special Rapporteur on Torture, and in the light of the experience of the European Convention on the Prevention of Torture, a system of visits to places of detention, of preventive and non-judicial nature, is proposed by the Government of Costa Rica.

My Delegation has repeatedly recognised the importance of such a system of visits, based on the principle of co-operation between States. This was the reason for the ratificaton by Portugal of the European Convention.

In view of the importance we attach to this question, we consider we should benefit from a broad discussion and study, namely by giving Governments, intergovernmental and non governmental organizations the possibility of expressing their views, either by written comments or through the participation in a future Working Group. Particular importance should also be given to comments by the Special Rapporteur on Torture and the Committee established by the UN Convention.

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4.2. The other text under consideration is the draft Declaration on the Protection of all Persons from Enforced or Involuntary Disappearances", adopted during the last session of the Sub-Commission.

The present draft is the outcome of a long debate in which Portugal has actively participated. For this reason my Delegation naturally welcomes the draft submitted by the Sub-Commission and hopes it will be soon adopted by our Commission.

We are sure this new instrument will be a major step forward in the fight against enforced or involuntary disappearances, a phenomen which, as reflected in the present report of the Working Group of the Commission, still remains a dramatic figure in the world of today.

At this stage, my delegation would like to comment on some of the basic concerns showed by the draft Declaration.

a) First of all, the question of a definition of enforced or involuntary disappearances. As we have previously stated, we don't feel there is a need for such definition in a declaration.

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On the other hand, we recognize the difficulties in reaching one and the danger of thus narrowing the scope of the protection we are exactly trying to ensure. Finally, we consider this text underlines the basic elements of the reality we are concerned about - its nature as an offence against the human dignity, the placement of the victim outside the protection of the law (art.1) and the strict applicability to those acting in an official capacity (article 4).

b) The second element we would like to enlight is the importance given to the prevention of disappearances, (namely by

- training of law enforcement officials (art.6 par.3);
- holding persons deprived of their liberty only in officially recognized places of detention where official updated registers are to be established (art.10);
- specifying the officials authorized to order detentions, conditions for detention and sanctions for refusal to provide information on a person's detention (art.12);
- ensuring effective prevention of torture, intimidation or reprisal (art.11 and 13 par.3).)

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c) Finally, Mr. Chairman, we would like to underline the importance attached to the independence and impartiality of the judiciary, when considering the right to complaint, the right to a thorough investigation, the right to an effective judicial remedy, where habeas corpus has a decisive role to play, or when ensuring that those involved in the investigation, or conducing it, should be protected against ill-treatment, intimidation or reprisal.

We should recall, in this connection, one important decision of the Working Group on Disappearances to adopt a "prompt intervention procedure" for those cases of intimidation, persecution or reprisals requiring an immediate action to protect fundamental rights. We welcome this further improvement of the methods of work of the Working Group, which reaffirms its determination to reinforce its struggle against enforced or involuntary disappearances.

Mr. Chairman,

5. The question of the independence and impartiality of the judiciary was also a central concern of last session of the Sub-Commission. In fact, in the

light of the excellent working paper prepared by Mr. Louis Joinet, an important step was taken towards the consideration of the Sub-Commission's specific role in the area of monitoring, in order to complement and reinforce the standard-setting activities developped by the United Nations Crime Branch, in Vienna.

We recognize in this context the particular interest of examining legislation and other measures adopted in different countries, as well as to consider the factors and difficulties which might have contributed to prevent that independence and impartiality.

We would consider particularly helpful to foresee the establishment of an Information Network, providing an ongoing interflow of information between Member States, NGO's and the United Nations, and giving a true and helpful picture of the situations which would advise the organization of Seminars, Courses or assistance programmes, through advisory services.

Mr. Chairman,

6. I would like to turn now to the important set of texts adopted in the last Congress on the Prevention of Crime and the Treatment of Offenders, in the field of Justice and Human Rights, texts which in their majority

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will be soon included in the blue Compilation of International Instruments.

6.1. I would like, in this framework, to mention the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors, which will clearly contribute to a wider and more effective access to justice and protection of fundamental rights, as well as to a deeper effectiveness, impartiality and fairness of the administration of justice.

6.2. Another significant step has been the adoption of the Basic Principles on the Use of Force and Firearms by law Enforcement Officials. Reaffirming the exceptional nature of the use of violent means, this text underlines the need for law enforcement officials to respect and preserve the human life and to commensurate the use of force and firearms with due respect for human rights. It further recalls that the abusive use of violence should be punished as a criminal offence under criminal law, an effective review procedure being needed to that end.

6.3. We welcome, in the diversity of the texts adopted, the particular concern showed towards children, recognized as being particularly vulnerable and needing further consideration and protection.

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In their different perspective, they reflect a common body of minimum standards, showing that the essential consideration of the basic needs of the child reveals the need for also envisaging specific solutions.

Deprivation of liberty is recalled to be a disposition of last resort, for the minimum necessary period and limited to exceptional cases (Rules 1, 2, 3).

On the other hand, it is considered that:

- Pre-trial detention of juveniles should be avoided and alternatives measures applied.

- Adequate medical care, should be provided and, upon admission to a detention facility, any juvenile should be examined for the purpose of recording any evidence of ill-tretament.

- Recourse to force for any purpose should be prohibited and the juvenile should be entitled to communicate with an independent authority and to bring a complaint before the judicial authority, if needed with the assistance of the family, counsellor or humanitarian groups (Rules 63, 72-78).

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Mr. Chairman,

7. These examples necessarily show an indeniable trend to strengthening the system of protection of human rights in the world. The standard - setting process is, in fact, encouraging and we all have an important role to play in their implementation.

Unfortunately, however, we are more and more aware of situations where the reality is another, where violations of human rights occur in a systematic way and where the rule of law is simply replaced by the rule of fear and oppression.

East Timor is exactly one of those sad cases where reliable allegations of violation of human rights continue to raise our deepest concern, specially when young people seem to constitute a main target.

Although the access to the territory continues to be restricted, namely to human rights organizations, different reliable sources echo the persistance of intolerable human rights abuses.

7.1. These sources coincide in pointing out that the situation has worsened since last September, when a

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peaceful demonstration was held during the open air mass in Dili. Banners and posters calling for independence were raised and slogans were chanted by a group of students. A violent response on the spot by the security forces was averted, but the tension mounted and a number of detentions of young people followed.

In October new incidents occurred when students in two high-schools allegedly expressed pro-independence sympathies. Clashes between the security authorities and the youngsters lead to several more dozens of arrests.

The detentions seem to have been carried out arbitrarily, and the victims were held incommunicado in police, military or even in unofficial detention centres, for hours, days or weeks. In many cases their wereabouts remained unknown. Most have undergone severe beatings, ill-treatment or different forms of torture, before being released without any formal charge.

It was in this context that urgent appeals were sent by the Special Rapporteur on Torture to the Government of Indonesia, as reflected in his last report. But torture was simply denied!

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The "Country Reports on Human Rights Practices for 1990 - Indonesia" released by the US Department of State, recognizes that "youths detained in East Timor in connection with civil unrest, were beaten sometimes severly and in some cases subjected to more serious physical mistreatment. Policemen often resort to physical abuse even in minor incidents. Officials have publicly acknowledge and condemned police brutality and unacceptable prison conditions.

However in 1990 there were no known instances of officials being punished for mistreatment of political prisoners or detainees. Pre-trial mistreatment of detainees to obtain confessions is reportedly common".

Still according to the same report, "at least 15 civilians were killed in East Timor by the military in 1990".

At the same time Amnesty International reports on detainees having been killed in custody or having died from injuries after being torture.

Amnesty International, referring to the situation prevailing in East Timor, said to be concerned with a "pattern which has emerged in the last two years, of short-term detention, ill-treatment and torture of alleged political opponents of indonesian rule". In its view, this pattern appears as a systematic strategy to silence the real or the merely suspected opponents to that rule.

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This same athmosphere is reflected in the recent report of the Working Group on Enforced or Involuntary Disappearances, when considering the justifiable fear of East Timorese to become themselves victims, if they report on disappearances.

Mr. Chairman,

When confronted with such a reality, coloured by fear and suffering, the international community cannot simply ignore or forget!